

## **CHAPTER 57-33**

### **TAXATION OF RURAL ELECTRIC COOPERATIVES**

**57-33-01. Cooperatives subject to taxation - Classification.** Cooperatives subject to taxation under the provisions of this chapter are nonprofit cooperative corporations engaged in the distribution or transmission of electric energy primarily for consumption in rural areas, and nonprofit cooperative corporations engaged in the generation of electric energy primarily for consumption in rural areas. However, any electrical energy generation plant that has at least one single electrical energy generation unit with a generating capacity in excess of one hundred thousand kilowatts, owned or operated by a nonprofit cooperative corporation, and the gross receipts from such plant are not taxable under this chapter but must be taxed under section 57-33.1-02. The property of nonprofit cooperative corporations engaged in the distribution, transmission, or generation of electrical energy primarily for consumption in rural areas and to be taxed under the provisions of this chapter is hereby expressly classified as personal property for the purpose of taxation. Such corporations are hereinafter referred to as cooperatives.

**57-33-02. Personal property defined.** For the purposes of this chapter, the personal property of the cooperatives includes the following property used by a cooperative in connection with the distribution, transmission, and generation of electric energy, including all poles, wires, lines, transformers, generating equipment, meters, machinery, buildings, and substations used for housing such equipment and office fixtures of every character used in connection with the cooperative business.

**57-33-03. Report of gross receipts.** Each cooperative annually on or before May first in each year shall file a report with the tax commissioner in such form and containing such information as the tax commissioner may prescribe and demand. Such report must state the amount of gross receipts derived during the preceding calendar year. Gross receipts derived from the sale of a capital asset do not have to be reported. Each such cooperative at the same time shall file with the county auditor of each county within which any of its lines are located a report giving the length of the line or lines within each taxing district in said county and the total length of its lines within the county as of January first of that year. The county auditor may require a map to be filed, showing the length of the lines within each taxing district of said county. To facilitate the making of such maps, the county auditor shall furnish each cooperative an accurate map of the county showing the boundaries of each taxing district. A cooperative that does not own and operate an electric generation plant and which purchases electric energy for resale to cooperatives subject to taxation under this chapter shall include in its report to the tax commissioner the cost and amount of all electric energy purchased for resale. The cost of electric energy purchased for resale must be deducted from the cooperative's gross receipts before determining the cooperative's tax liability under this chapter. A cooperative that purchases wind power for resale to others from a North Dakota wind energy facility subject to centrally assessed property taxation shall include in its report to the tax commissioner the cost and amount of all such wind energy purchased for resale. The cost of such wind energy purchased for resale must be deducted from the cooperative's gross receipts before determining the cooperative's tax liability under this chapter.

**57-33-04. Tax imposed in lieu of personal property tax - Privilege tax imposed by city.**

1. The tax commissioner shall levy on each cooperative a tax upon its gross receipts for the preceding calendar year. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this section. Each year for the first five years during which such cooperative is engaged in business the tax must be one percent and thereafter the tax must be two percent of its gross receipts. For the purpose of determining when the two percent rate must be applied, the first year the cooperative is engaged in business must be the first year in which the cooperative was engaged in business prior to April first of that year. The tax hereby imposed is in lieu of any other taxes levied on the personal property of such cooperatives.

2. a. In addition to and notwithstanding any other provisions of this chapter, the governing body of any incorporated city in which electric power is furnished to consumers in the city by a rural electric distribution cooperative may, by ordinance, elect to impose an annual tax upon the rural electric distribution cooperative for the privilege of distributing and furnishing such power to consumers within the city. The amount of such tax must be measured and limited in the manner hereinafter provided.
- b. The assessing officer responsible for the local ad valorem assessment of property in the city shall annually determine the value of the distribution system within the geographic limits of the incorporated city that is operated by the rural electric distribution cooperative and is reasonably necessary for the distribution by it of electric power to consumers in the city. As used in this subdivision and subsection, the term "distribution system" does not include buildings, equipment, tools, and supplies that are necessary and are used in the operation of the entire rural electric cooperative system, both within and outside the incorporated limits of the city. The assessing officer in determining such valuation may request the aid and assistance of personnel in the office of the state tax commissioner who are charged with the duty of assembling and evaluating the information that is used by the tax commissioner in making tentative valuations pursuant to the provisions of chapter 57-06. In determining such valuation, the assessing officer shall value it at an amount that is, insofar as reasonably possible, equal to the amount at which it would be valued pursuant to the provisions of chapter 57-06 if it were subject to assessment thereunder.
- c. After the assessing officer has determined the value of such property of the cooperative, the assessing officer shall send by mail to the cooperative a notice in which the amount of such valuation is stated and in which a day approved by the governing body of the city is specified on which the representatives of the cooperative may appear and present information relating to the amount and value of the property of the cooperative that is valued for the purposes of this subsection. The notice must be mailed at least ten days prior to the day prescribed by law for the governing body to convene as a board of equalization. After considering such information as may be presented by the representatives of the cooperative and by the assessing officer, the governing body shall, within ten days after the day specified in the notice, approve or adjust the valuation made by the assessing officer and shall immediately notify the cooperative by mail of the amount of valuation determined by it. If such cooperative is dissatisfied with the valuation set by the governing body, it may bring an action for review of the valuation in district court of the county in which the city is located, provided such action is brought before the privilege tax imposed pursuant to this subsection becomes due.
- d. The governing body of the city shall, on or before the first day of December of each year, compute and assess the amount of the privilege tax due from the cooperative by multiplying the taxable value of the cooperative's property as determined by it by the total amount of mills levied by it for all purposes on other property in the city that is assessed and taxed pursuant to the ad valorem property tax laws of this state; from such amount there must then be subtracted that amount of tax levied on the cooperative pursuant to the provisions of section 57-33-04 that is allocable and distributable to the city pursuant to section 57-33-07; and the difference then remaining must be the amount of tax levied on the cooperative by the governing body of the city for the privilege of distributing and furnishing electric power to consumers in the city. The county auditor, when requested, shall notify the governing body of the city of the amount of tax allocated by the county auditor to the city pursuant to section 57-33-06. The tax must be paid by the cooperative to the auditor of the city which levies the tax and must be credited to its general fund.

- e. The provisions of this subsection may not be construed as subjecting the cooperative to the jurisdiction of the public service commission nor as classifying such cooperative as a public utility company.
3. All of the provisions of law with respect to the due date, the date of delinquency, interest rate, penalty, and enforcement of collection of personal property taxes generally are equally applicable to any tax provided for in this chapter.

**57-33-05. Apportionment of tax.** The tax commissioner shall apportion the taxes due from each cooperative to each county in which its lines are located in the ratio which the number of miles [kilometers] of its lines in each county bears to the total number of miles [kilometers] of lines of such cooperative and shall certify to the county auditor of each county the amount of taxes so apportioned; provided, that the tax commissioner shall apportion the taxes due from any generating cooperative with less than two hundred miles [321.87 kilometers] of transmission lines, as follows: eighty-five percent thereof to the county in which such cooperative's generating equipment and plant is located and fifteen percent thereof to the counties in which its transmission lines are located in the ratio in which the number of miles [kilometers] of lines in each county bears to the total number of miles [kilometers] of lines of such cooperative.

**57-33-06. Duty of county auditor.** It is the duty of the county auditor to allocate the amount of the taxes due from each cooperative as certified by the tax commissioner to each taxing district in which the lines are located in the ratio which the total number of miles [kilometers] of all kinds of lines in each such district bears to the total number of miles [kilometers] in the county, except that such taxes due from any generating cooperative with less than two hundred miles [321.87 kilometers] of transmission lines must be allocated as follows: eighty-five percent to the taxing district in which the generating equipment and plant is situated and fifteen percent to the taxing districts in which its transmission lines are situated in the aforesaid ratio. The county auditor shall certify such taxes to the county treasurer for collection at the time and in the manner in which real and personal property taxes are required to be certified.

**57-33-07. Allocation of proceeds of tax - Duty of county treasurer.** Upon receipt by the county treasurer of the amount of tax payable under this chapter, the county treasurer shall apportion and distribute, to the state, the county, and local taxing districts of the county in which the lines and generating equipment and plant of such cooperative are located, the amount of such tax payment so received by the county treasurer on the basis on which the general property tax levy is apportioned and distributed.